



DEPARTMENT OF LAW  
OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona 85007

(R76-120)

BRUCE E. BABBITT  
ATTORNEY GENERAL

April 16, 1976

76-125

Mr. Russell L. Miller  
Acting Auditor General  
3001 West Indian School Road  
Suite 315  
Phoenix, Arizona 85017

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

Dear Mr. Miller:

Mr. Osman had asked our opinion as to whether or not the provisions of A.R.S. §§ 41-1051 et seq. apply to the Office of the Auditor General when contracting with certified public accountants to perform audits at selected state and county agencies. For the following reasons, it is our opinion that the answer to Mr. Osman's question is "Yes".

A.R.S. §§ 41-1051 et seq. were enacted by the Arizona Legislature in 1973 as Chapter 149, Laws 1973. The act established mandatory procedures that must be followed by all State budget units contracting for outside professional services, with certain limited exceptions. Although the phrase "state budget units" is not defined in the act, the Legislature's declaration of purpose contained in § 1 of the act describes the scope and purpose of the act as follows:

The purpose of this act is to prescribe requirements for the selection of outside professional services by any department, agency, board, commission or institution of the state. . . . [Emphasis added.]

This declaration of purpose indicates a legislative intent to apply the provisions of the act broadly; and in our opinion, indicates an intent to apply the act to such agencies as the Office of the Auditor General.

The only other example of the Legislature's statutory use of the phrase "state budget units" is found in the provisions of Chapter 1, Title 35, Arizona Revised Statutes, which relate to the budgetary and fiscal procedures for state agencies. That chapter defines "budget unit" in A.R.S. § 35-101 as follows:



\* \* \*

4. 'Budget unit' means a department, commission, board, or institution or other agency of the state organization receiving, expending or disbursing state funds or incurring obligations against the state.

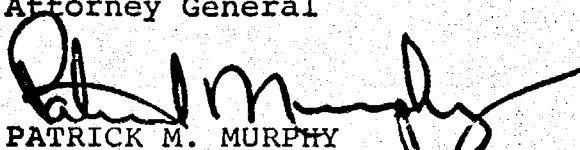
Although this definition is not specifically applicable to the provisions of A.R.S. §§ 41-1051 et seq., the phrase is a technical phrase and one that is peculiar to the legislative budgetary process. Accordingly, the aforementioned definition is helpful in determining the legislative intent underlying the use of the phrase in A.R.S. §§ 41-1051 et seq. The various provisions of Chapter 1 dealing with budgetary and fiscal procedures of state agencies impose certain requirements on "budget units". We are informed by the Department of Administration that the department has always treated the Office of the Auditor General as a budget unit for purposes of Chapter 1, Title 35, Arizona Revised Statutes. This interpretation by the Department of Administration appears wholly consistent with the definition of "budget unit" and the language of the provisions contained in that chapter. Accordingly, we have concluded that the Office of the Auditor General is likewise a "budget unit" for purposes of A.R.S. §§ 41-1051 et seq.

The fact that the contractor will report directly to the Auditor General and will be doing essentially the same type of work that is performed by regular employees of the Office of the Auditor General is of no consequence. As long as the service to be performed by the contractor is a professional service, it is subject to the provisions of A.R.S. §§ 41-1051 et seq. Op. Atty. Gen. No. 75-9 held that the services of certified public accountants are professional services and are subject to the requirements of A.R.S. §§ 41-1051 et seq.

Accordingly, it is our opinion that the Office of the Auditor General must comply with the provisions of A.R.S. §§ 41-1051 et seq. when contracting with certified public accountants to perform audits at selected state and county agencies.

Sincerely,

BRUCE E. BABBITT  
Attorney General

  
PATRICK M. MURPHY  
Assistant Attorney General

PMM:lg